

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 14 June 2007

Case No: 2007-LHC-00550

OWCP No: 05-121217

In the Matter of:

L.P.,

Claimant,

v.

NEWPORT NEWS SHIPBUILDING
AND DRY DOCK COMPANY,
(Self-Insured),

Employer/Carrier,

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,

Party-in-Interest.

DECISION AND ORDER – AWARDING BENEFITS

This proceeding arises from a claim filed under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended (Act), 33 U.S. Code, Title 33, § 901 et seq., and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 18, and Title 20, Chapter VI, Subchapter A .

A formal hearing was held in Newport News, Virginia, on June 13, 2007, at which time the parties were afforded full opportunity to present evidence and argument as provided in the Act and applicable regulations. Neither the Claimant nor the Director appeared. At the hearing, Administrative Law Judge exhibits 1 through 3 and Employer's exhibits 1 through 9 were

admitted without objection¹. Claimant's counsel did not submit documentary evidence. No witness testified.

The findings of fact and conclusions which follow are based upon the oral stipulations and documentary evidence admitted at the formal hearing as well as applicable statutory provisions, regulations and pertinent precedent.

STIPULATIONS

At the formal hearing the parties stipulated to, and this Administrative Law Judge finds, the following as fact:

1. That on February 23, 2005, the Claimant was in the employ of the Employer, and that the liability of the Employer for payment of workers' compensation benefits was insured by the self-insured Employer.
2. That on February 23, 2005, the Claimant, while performing services as a shipbuilder and while engaged in his normal occupation, sustained injury to both knees.
3. That written notice of the injury was not given within thirty (30) days but that the Employer had knowledge of the injury and has not been prejudiced by lack of such written notice.
4. That the Employer furnished the Claimant with medical services in accordance with the provisions of Section 7 of the Act.
5. That the average weekly earnings of the Claimant at the time of injury were \$811.25.
6. That as a result of the work-related injury, the Claimant has sustained permanent partial disability effective February 8, 2006, equivalent to a twenty percent (20%) loss of use of the left lower extremity (leg) and a twenty percent (20%) loss of use of the right lower extremity (leg), for a total of forty percent (40%) for which he is entitled to permanent partial disability compensation for 115.2 weeks (40% of 288 weeks) at a compensation rate of \$540.84 per week, amounting to a total of \$62,304.77.
7. That there were no periods of entitlement to temporary total disability compensation between February 23, 2005 and February 7, 2006.
8. That there were no periods of entitlement to temporary partial disability compensation between February 23, 2005 and February 7, 2006.
9. That the Employer began payment of permanent partial disability on September 6, 2006 based on an entitlement date of February 8, 2006, and an entitlement period of 115.2 weeks at the compensation rate of \$540.84 per week.

¹ The following exhibit notation applies: ALJX – Administrative Law Judge exhibit; EX – Employer exhibit

10. That there is no issue of interest or penalties in this case.

ISSUES

The issues referred to formal hearing were:

1. Whether the Claimant is entitled to permanent partial disability compensation for bilateral leg injury incurred on February 23, 2005; and,
2. Whether the Claimant is entitled to a twenty percent (20%) scheduled injury to each leg from a covered work-related injury of February 23, 2005.

PARTY CONTENTIONS

Claimant's Contentions:

Claimant's counsel agrees to the oral stipulations entered but objects to a formal Decision and Order being entered in the case since (1) there was no formal request to the District Director to issue an order out of the informal conference procedures as provided by 20 CFR § 702.315(a); and, (2) there was no refusal by the District Director to enter an order at the Director level.

Employer's Contentions:

Employer's counsel requests a formal order to document the issues and facts of the case for future review, should that become necessary.

DISCUSSION

In this case there is no evidence of an informal conference being held on the claim, or a formal compensation order being issued, by the District Director under the authority set forth in 20 CFR §§ 702.311 through 702.316. Employer's counsel submits that the December 8, 2006, Employer letter to the District Director (EX 8) sets forth a request in writing for "an informal conference regarding the issuance of an order in accordance with submitted stipulations" as well as a request for a formal compensation order under 20 CFR § 702.315. However, 20 CFR § 702.315(a) requires the District Director to issue a formal compensation order within thirty days of a written request for such an order only when the informal conference procedures results in an agreement of the Parties "on all issues." Where an agreement on all the issues cannot be reached through the informal process, the District Director must then proceed in accordance with 20 CFR § 702.316. This includes the duty to prepare the case for transfer to the Office of the Administrative Law Judge "if any party has requested a hearing," 20 CFR § 702.316. Here the Employer requested "formal adjudication" of the case by letter to the District Director dated

December 14, 2006 (EX 9). The District Director forwarded the case to the Office of Administrative Law Judge on December 26, 2006 (ALJX 2).

“With the exception of those duties imposed by the Act, §§ 919(d) [involving hearings before an Administrative Law Judge in accordance with the Administrative Procedure Act], 921(b) [involving the Benefits Review Board] and 941 [involving safety rules and regulations], the Secretary of Labor has delegated all responsibilities of the Department with respect to the administration of the LHWCA to the Director of the Office of Workers’ Compensation Programs (OWCP).” ... The Act “assigns four basic areas of responsibility to the Director: (1) supervising, administering, and making rules and regulations for calculation of benefits and processing claims; (2) supervising, administering, and making rules and regulations for provision of medical care to covered workers; (3) assisting claimants with processing claims and receiving medical and vocational rehabilitation; and (4) enforcing compensation orders and administering payments to and disbursements from the special fund established by the Act for the payment of certain benefits.” ... “The Director is not the designated champion of employees within this statutory scheme. To the contrary, one of [the Director’s] principal roles is to serve as the broker of informal settlements between employers and employees.” *Director, OWCP v. Newport News Shipbuilding and Dry Dock Co.*, 514 US 122, 115 S.Ct. 1278 at 1283, 1285, 1286 (1995) Holding an informal conference pursuant to 20 CFR Chapter VI, Subpart C is within the sound discretion of the District Director and is not subject to review by an administrative law judge; and “there is no requirement that such an informal conference must be held before the case may be referred to the Office of Administrative Law Judges.” *Matthews v. Jeffboat, Inc.*, 18 BRBS 185, 187 (1986)

In summary, the decision to hold, or not hold, an informal conference is within the sound discretion of the District Director and not subject to review by this Administrative Law Judge; a formal compensation order based on the informal conference procedures may only be issued if there is agreement on all issues before the District Director; and, the District Director must forward the case upon the request for a formal hearing. After deliberations on the evidence of record, this Administrative Law Judge finds that the District Director was not required to issue a formal compensation order based upon informal conference procedures and was required to forward the case for formal hearing upon receipt of the Employer’s written request for such a hearing. Accordingly, Claimant’s counsel’s objection to issuance of a written Decision and Order in this case is without merit and is overruled.

CONCLUSION AND FINDINGS OF FACT

After deliberation on all the evidence of record, this Administrative Law judge finds:

1. The Claimant is entitled to permanent partial disability compensation for his work-related bilateral leg injury incurred on February 23, 2005.
2. That as a result of the work-related injury, the Claimant has sustained permanent partial disability effective February 8, 2006, equivalent to a twenty percent (20%) loss of use of the left lower extremity (leg).

3. That as a result of the work-related injury, the Claimant has sustained permanent partial disability effective February 8, 2006, equivalent to a twenty percent (20%) loss of use of the right lower extremity (leg)
4. That the Claimant is entitled to permanent partial disability compensation for 115.2 weeks (40% of 288 weeks) at a compensation rate of \$540.84 per week, amounting to a total of \$62,304.77.
5. That the Employer began payment of permanent partial disability on September 6, 2006 based on an entitlement date of February 8, 2006, and an entitlement period of 115.2 weeks at the rate of \$540.84 per week.

ORDER

It is hereby ORDERED that:

1. In accordance with the Act, Employer shall pay Claimant permanent partial disability compensation for 115.2 weeks at a compensation rate of \$540.84 per week for the period from February 8, 2006.
2. Employer shall receive credit for any related disability benefits previously paid to Claimant.
3. Interest at the rate specified in 28 USC § 1961 in effect when this Decision and Order is filed with the District Director shall be paid on all accrued benefits computed from the date on which each payment was originally due to be paid.
4. All monetary computations made pursuant to this Order are subject to verification by the District Director.
5. Employer shall provide such reasonable, appropriate, and necessary medical treatment as the nature of the Claimant's work-related based disability requires pursuant to § 907 of the Act.
6. Should Claimant's counsel seek attorney fees and legal costs associated with this case, Claimant's counsel shall file a fully itemized and supported fee petition with the Court within twenty (20) days of the receipt of this Decision and Order, and send a copy of same to opposing counsel, who shall then have fifteen (15) days to respond with objections thereto.

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ALAN L. BERGSTROM
Administrative Law Judge

